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# TRANSCRIPT OF RECORD.

161—306

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1894.**

No. ~~911~~. 528

JOHN H. DURLAND, PLAINTIFF IN ERROR,

*vs.*

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

**FILED FEBRUARY 15, 1895.**

**(15,795.)**

# (15,795.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 1, 1895.

1 In the District Court of the United States for the Eastern District of Pennsylvania.

Pleas before the Honorable the Judge of said Court of —, November Sessions, 1894, No. 19.

It is thus contained:

THE UNITED STATES
*vs.*
JOHN H. DURLAND. } Indictment.

Be it remembered that at a district court of the United States in and for the eastern district of Pennsylvania, holden at Philadelphia, on the nineteenth day of November, A. D. 1894, before the Honorable William Butler, judge of said court, by the oaths of William H. Lambert, George Allen, Melvin R. Brown, Charles H. Duttera, Jacob Enders, Benjamin L. Jordan, Benjamin F. Kendig, Frank La Lanne, Harry A. Randall, Charles H. Ruhe, Daniel Schweyer, and by the affirmations of William Bertram, John W. Chalfant,
2 Levi Engle, George E. Fort, Caleb R. Heyburn, Eugene James, Tobias D. Martin, Benjamin Tomlinson, Samuel P. Webb, and John E. Weitzel, good and lawful men of the said district, then and there empaneled and sworn or affirmed and charged to inquire for the said United States and for the body of said district—

It is presented as follows:

In the District Court of the United States for the Eastern District of Pennsylvania, November Sessions, 1894, No. 19.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

The grand inquest of the United States of America, inquiring in and for the eastern district of Pennsylvania, upon their respective oaths and affirmations respectively do present that heretofore, to wit, upon the seventh day of September, in the year of our Lord one thousand eight hundred and ninety-four, one John H. Durland, late of the district aforesaid, yeoman, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, and falsely devise a scheme and artifice to defraud—that is to say, by divers false pretences and subtle means and devices to obtain and acquire for himself of and from divers persons to this grand inquest unknown a large sum of money, to wit, the sum of fifty dollars each, and to cheat and defraud each of the said divers persons
3 thereof by then and there representing, among other things, that the Provident Bond and Investment Company would upon the payment of a certain sum of money, to wit, the sum of ten dollars, and a further sum of five dollars monthly thereafter, by each of the said divers persons, issue to each of the said divers persons a bond in the words and matter following, to wit:

(Here follows photolithograph marked p. 4.)

5 And that the said bonds would mature in accordance with paragraphs third, fourth, fifth, sixth, seventh, and eighth of said bond hereinbefore set out, and that the redemption value of the said bond when called and the sum of money payable therefor to the said divers persons by the said Provident Bond and Investment Company would be the sum specified and at the time named, and upon the payments of the sums of money named in the circular issued by the said Provident Bond and Investment Company, which is in the words and matter following, to wit:

6 *A Nut for Lottery Cranks to Crack.*

We give below our graduatory scale of redemption values, which is a complete refutation of the charge that a "lottery" element enters into the methods of the Provident Bond and Investment Company. It will be observed that a steadily increasing cash value applies to every bond in force from its issue to redemption. That every bond of equal age has the same cash value.

It is a further fact that every bond is non-forfeitable and interest-bearing, having both "cash surrender" and loan values. Where does the lottery element come in?

*Redemption Scale.*

Scale of current redemption values under the current system of tontine investment, showing profit over total cost upon each $1,000 bond from date of issue to face value; $500 bonds, one-half of said amounts, both cost and profit.

| No. of months in force. | Cost to holder, including premium. | Cash paid by Co. for redemption. | Profits over cost. | Per cent. of profit. |
|---|---|---|---|---|
| 1..... | $15 00 | | | |
| 2..... | 20 00 | | | |
| 3..... | 25 00 | $30 00 | $5 00 | 20 |
| 4..... | 30 00 | 40 00 | 10 00 | 33 |
| 5..... | 35 00 | 50 00 | 15 00 | 42.8 |
| 6..... | 40 00 | 60 00 | 20 00 | 50 |
| 7..... | 45 00 | 70 00 | 25 00 | 55.8 |
| 8..... | 50 00 | 80 00 | 30 00 | 60 |
| 9..... | 55 00 | 90 00 | 35 00 | 63.6 |
| 10..... | 60 00 | 100 00 | 40 00 | 66.6 |
| 11..... | 65 00 | 110 00 | 45 00 | 69.2 |
| 12..... | 70 00 | 120 00 | 50 00 | 71.4 |
| 13..... | 75 00 | 130 30 | 55 30 | 73.7 |
| 14..... | 80 00 | 140 60 | 60 60 | 75.7 |
| 15..... | 85 00 | 150 90 | 65 90 | 77.5 |
| 16..... | 90 00 | 161 20 | 71 20 | 79.1 |

N BOND.

Series

# Company

NTHLY EXPENSE DU

d in like manner with the interest

converted into a full paid cer
certificate to increase at the rate
specified in this section; or b-
ontributed by this bond to
per cent. a sum equal to the
force.

pon receipt of satisfactory proof of
resentatives the sum of all
th, occurs after one year from
tives of the owner by direct issue
tinued to its maturity or redemption
sions, but assignments to be valid,
lone dollar paid therefor.

Day of _____ 189

nent Company.

_____ President.

*Redemption Scale*—Continued.

| No. of months in force. | Cost to holder, including premium. | Cash paid by Co. for redemption. | Profits over cost. | Per cent. of profit. |
|---|---|---|---|---|
| 17 | $95 00 | $171 50 | $76 50 | 80.5 |
| 18 | 100 00 | 181 80 | 81 80 | 81.8 |
| 19 | 105 00 | 192 10 | 87 10 | 82.9 |
| 20 | 110 00 | 202 40 | 92 40 | 84 |
| 21 | 115 00 | 212 70 | 97 70 | 84.9 |
| 22 | 120 00 | 223 00 | 103 00 | 85.8 |
| 23 | 125 00 | 233 30 | 108 30 | 86.6 |
| 24 | 130 00 | 243 60 | 113 60 | 87.3 |
| 25 | 135 00 | 254 20 | 119 20 | 88.2 |
| 26 | 140 00 | 264 80 | 124 80 | 89.1 |
| 27 | 145 00 | 275 40 | 130 40 | 89.9 |
| 28 | 150 00 | 286 00 | 136 00 | 90.1 |
| 29 | 155 00 | 296 60 | 141 60 | 91.3 |
| 30 | 160 00 | 307 20 | 147 20 | 92 |
| 31 | 165 00 | 317 80 | 152 80 | 92.6 |
| 32 | 170 00 | 328 40 | 158 40 | 93.1 |
| 33 | 175 00 | 339 00 | 164 00 | 93.7 |
| 34 | 180 00 | 349 60 | 169 60 | 94.2 |
| 35 | 185 00 | 360 20 | 175 20 | 94.7 |
| 36 | 190 00 | 370 80 | 180 80 | 95.1 |
| 37 | 195 00 | 381 70 | 186 70 | 95.7 |
| 38 | 200 00 | 392 60 | 192 60 | 99.3 |
| 39 | 205 00 | 403 50 | 198 50 | 96.8 |
| 40 | 210 00 | 414 40 | 204 40 | 97.3 |
| 41 | 215 00 | 425 30 | 210 30 | 97.8 |
| 42 | 220 00 | 436 20 | 216 20 | 98.2 |
| 43 | 225 00 | 447 10 | 222 10 | 98.7 |
| 44 | 230 00 | 458 00 | 228 00 | 99.1 |
| 45 | 235 00 | 468 90 | 233 90 | 99.5 |
| 46 | 240 00 | 479 80 | 239 80 | 99.9 |
| 47 | 245 00 | 490 70 | 245 70 | 100.28 |
| 48 | 250 00 | 501 60 | 251 60 | 100.64 |
| 49 | 255 00 | 512 80 | 257 80 | 101.09 |
| 50 | 260 00 | 524 00 | 264 00 | 101.53 |
| 51 | 265 00 | 535 20 | 270 20 | 101.96 |
| 52 | 270 00 | 546 40 | 276 40 | 102.37 |
| 53 | 275 00 | 557 60 | 282 60 | 102.76 |
| 54 | 280 00 | 568 80 | 288 80 | 103.14 |
| 55 | 285 00 | 580 00 | 295 00 | 103.51 |
| 56 | 290 00 | 591 20 | 301 20 | 103.86 |
| 57 | 295 00 | 602 40 | 307 40 | 104.20 |
| 58 | 300 00 | 613 60 | 313 60 | 104.53 |
| 59 | 305 00 | 624 80 | 319 80 | 104.85 |

*Redemption Scale*—Continued.

| No. of months in force. | Cost to holder, including premium. | Cash paid by Co. for redemption. | Profits over cost. | Per cent. of profit. |
|---|---|---|---|---|
| 60 | $310 00 | $636 00 | $326 00 | 105.16 |
| 61 | 315 00 | 647 50 | 332 50 | 105.55 |
| 62 | 320 00 | 659 00 | 339 00 | 105.93 |
| 63 | 325 00 | 670 50 | 345 50 | 106.31 |
| 64 | 330 00 | 682 00 | 352 00 | 106.66 |
| 65 | 335 00 | 693 50 | 358 50 | 107.01 |
| 66 | 340 00 | 705 00 | 365 00 | 107.35 |
| 67 | 345 00 | 716 50 | 371 50 | 107.68 |
| 68 | 350 00 | 728 00 | 378 00 | 108.00 |
| 69 | 355 00 | 738 50 | 384 50 | 108.31 |
| 70 | 360 00 | 751 00 | 391 00 | 108.61 |
| 71 | 365 00 | 762 50 | 397 50 | 108.90 |
| 72 | 370 00 | 774 00 | 404 00 | 109.18 |
| 73 | 375 00 | 785 80 | 410 80 | 109.54 |
| 74 | 380 00 | 797 60 | 417 60 | 109.88 |
| 75 | 385 00 | 809 40 | 424 40 | 110.23 |
| 76 | 390 00 | 821 20 | 431 20 | 110.56 |
| 77 | 395 00 | 833 00 | 438 00 | 110.88 |
| 78 | 400 00 | 844 80 | 444 80 | 111.20 |
| 79 | 405 00 | 856 60 | 451 60 | 111.51 |
| 80 | 410 00 | 860 40 | 458 40 | 111.80 |
| 81 | 415 00 | 880 20 | 465 20 | 112.09 |
| 82 | 420 00 | 892 00 | 472 00 | 112.38 |
| 83 | 425 00 | 903 80 | 478 80 | 112.65 |
| 84 | 430 00 | 915 60 | 485 60 | 112.93 |
| 85 | 435 00 | 927 70 | 492 70 | 113.26 |
| 86 | 440 00 | 939 80 | 499 80 | 113.59 |
| 87 | 445 00 | 951 90 | 506 90 | 113.91 |
| 88 | 450 00 | 964 00 | 514 00 | 114.22 |
| 89 | 455 00 | 976 10 | 521 10 | 114.52 |
| 90 | 460 00 | 988 20 | 528 20 | 114.82 |
| 91 | 465 00 | 1,000 30 | 535 30 | 115.11 |

Such is the legitimate operation of "the current system of tontine investment," of which the Provident Bond and Investment Company is the exponent and its president is the author.

N. B.—The basic principle of the above table is copyrighted. Infringements without due authority of the author will be prosecuted.

7 Whereas in truth and in fact the said John H. Durland, being then and there the president of the said Provident Bond and Investment Company, did not intend that the said bonds would mature in accordance with paragraphs third, fourth, fifth, sixth, seventh, and eighth of the said bond, and that the redemption value of the said bond when called and the sum of money payable therefor to the said divers persons by the said Provident Bond and Investment Company would be the sum specified and at the time named and upon the payments of the sums of money named in the circular issued by the said Provident Bond and Investment Company, as he, the said John H. Durland, then and there well knew, and the said John H. Durland intended then and there by said false representations to obtain for his own use the sum of money paid by each of the divers persons for said bond, to wit, the sum of fifty dollars each;

Which said scheme and artifice to defraud was to be effected by him, the said John H. Durland, opening a correspondence and communication with each of the said divers persons by means of the post-office establishment of the United States and by inciting

8 such divers persons to open communication with him, the said John H. Durland, so devising and intending; and he, the said John H. Durland, did heretofore, to wit, upon the day and year aforesaid, so devising and intending in and for executing such scheme and artifice to defraud and attempting so to do, place and cause to be placed in a post office of the United States at Philadelphia, to be sent and delivered by the said post-office establishment, divers letters and packets, to wit, twenty letters and circulars, directed respectively to the said divers persons, the names and addresses of whom are to this grand inquest unknown, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America.

2. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations as aforesaid do further present that heretofore, to wit, upon the first day of June, in the year of our Lord one thousand eight hundred and ninety-three, the said John H. Durland, late of the district aforesaid, yeoman, at the district aforesaid and within the jurisdiction of this court, did

9 knowingly, wilfully, and falsely devise a scheme and artifice to defraud—that is to say, by divers false pretences and subtle means and devices to obtain and acquire for himself of and from divers other persons to this grand inquest unknown a large sum of money, to wit, the sum of fifty dollars each, and to cheat and defraud the said divers other persons thereof by then and there representing, among other things, that the Provident Bond and Investment Company would, upon the payment of a certain sum of money, to wit, the sum of four dollars and fifty cents monthly thereafter, issue to each of the said divers other persons a bond in the words and matter following, to wit:

(Here follows photolithograph marked p. 10.)

11 And that the said bond would mature and be subject to call and redemption in accordance with the terms of said bond as hereinbefore set out;

Whereas in truth and in fact the said John H. Durland, being then and there the president of the said Provident Bond and Investment Company, did not intend that the bonds would mature and be subject to call and redemption in accordance with the terms of the said bond as hereinbefore set out, as he, the said John H. Durland, then and there well knew; and the said John H. Durland intended then and there by said false representations to obtain for his own use the sum of money paid by each of the said divers other persons, to wit, the sum of fifty dollars each;

Which said scheme and artifice to defraud was to be effected by him, the said John H. Durland, opening correspondence and communication with each of the said divers other persons by means of the post-office establishment of the United States and by inciting such divers other persons to open communication with him, the said John H. Durland, so devising and intending; and he, the said John H. Durland, did heretofore, to wit, upon the day and year
12 last aforesaid, so devising and intending in and for executing such scheme and artifice to defraud and attempting so to do, place and cause to be placed in a post office of the United States at Philadelphia, to be sent and delivered by the said post-office establishment, divers letters and circulars, to wit, twenty letters and packets, directed respectively to the said divers other persons, the names and addresses of whom are to this grand inquest unknown, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America.

ELLERY P. INGHAM,
*U. S. Attorney.*

19 November, 1894.

Whereupon Alexander P. Colesberry, Esquire, the marshal of the said district, is commanded that he apprehend and take the body of the said John H. Durland to answer the premises; which said indictment the said the Honorable William Butler, judge of the
13 district court of the United States of America for the eastern district of Pennsylvania as aforesaid, afterwards, to wit, at the November sessions of the said the district court of the United States for the eastern district of Pennsylvania as aforesaid, holden for the district aforesaid, at Philadelphia, the nineteenth day of November, in the year of our Lord one thousand eight hundred and ninety-four, did deliver here in court of record, in form of law to be determined; and thereupon, at the said November sessions of the said the district court of the United States for the eastern district of Pennsylvania, at Philadelphia, in the district aforesaid, on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and ninety-four, before the Honorable William Butler, judge as aforesaid, comes the said John H. Durland, pursuant to recognizances by himself and his pledge-s before that entered into, and William C. Gross, Esquire, attorney of the said John H.

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Secretary.

Durland in this behalf, also comes and moves that the said indictment so as aforesaid specified and charged against the said John H. Durland be quashed for the reasons as set forth in the words
14 and matter following, to wit:

And the said John H. Durland in his own proper person personally cometh here into court and, having heard said indictment read, moves the court to quash the same, and in support of said motion assigns the following reasons:

1. Because the said John H. Durland was bound over simply to answer the charge of depositing a letter and circular in the post office of the United States in relation to an enterprise similar to a lottery, whereas the said bill of indictment consists solely of charges which are separate and distinct from the said offence for which he, the said John H. Durland, was bound over.

2. Because the said bill of indictment fails to set out specifically and particularly the contents and descriptions of the said alleged twenty letters and packets alleged to have been deposited in
15 the post office at Philadelphia, as alleged in the first and second count of said indictment.

3. Because the said bill of indictment fails to state the names and addresses to whom the said alleged twenty letters and packets were alleged to have been addressed.

4. Because the said bill of indictment is otherwise informal, bad, and defective; all of which matters and things said defendant is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the defendant further moves the court for his discharge by the court from the said premises.

WM. C. GROSS, *For Def't.*

And thereupon, afterwards, to wit, on the day and year last mentioned aforesaid, before the said the Honorable William Butler, judge as aforesaid, arguments on the motion to quash the aforesaid indictment having been heard by the court here and due con-
16 sideration having been given to the subject, the motion to quash the indictment aforesaid, so as aforesaid made in behalf of the said John H. Durland, is overruled; and thereupon, afterwards, on the same day, before the said the Honorable William Butler, judge as aforesaid, comes the said John H. Durland, appearing at the bar of the court in his proper person, and he, the said John H. Durland, concerning the premises in the said indictment above specified and charged on him as above, being asked in what manner he would be acquitted thereof, says that he is not guilty thereof; and thereupon, for good or ill, he puts himself upon the country, and Ellery P. Ingham, Esquire, attorney of the United States of America for the eastern district of Pennsylvania in this behalf, doth the like; therefore let a jury immediately come before the said the Honorable William Butler, the said judge above named, here, by whom the truth of the matter will be better known and who have no affinity to the said John H. Durland, to recognize upon their oaths and affirmations whether the said John H. Durland be guilty of the premises

in the indictment aforesaid above specified or not, because as
17 well the said Ellery P. Ingham, Esquire, who prosecutes for the said The United States of America in this behalf as aforesaid, as the said John H. Durland have put themselves upon that jury; and the jurors by the said marshal for this purpose impanelled and returned, to wit, John Crankshaw, Sr., Chalkley Styer, Stephen Cloud, F. Bowman Price, William Durkin, Edward Hehl, John Seldomridge, John E. C. Miller, Edward I. Hunt, Henry B. Derrickson, Christian Lapp, Charles Perine, being called, come, who, being chosen, tried, sworn, and affirmed to speak the truth of and upon the premises aforesaid in the indictment aforesaid above specified, do say upon their oaths and affirmations that the said John H. Durland is guilty of the premises in the indictment aforesaid above specified in manner and form as he stands charged; and thereupon the said John H. Durland is committed to the said marshal.

And thereupon, at the said November sessions of the said court for the said district, held, as aforesaid, on the eleventh day of December, in the year of our Lord one thousand eight hundred and ninety-four, before the said the Honorable William Butler,
18 judge as aforesaid, comes the said John H. Durland, by William C. Gross, William F. Harrity, James M. Beck, and Hampton L. Carson, Esquires, and says that the verdict aforesaid, so as aforesaid found and rendered against the said John H. Durland, ought not to stand, and that judgment thereon ought to be arrested, and that a new trial of the issue ought to be granted for the reasons as set forth in the words and matter following, to wit:

And now, to wit, Dec. 11th, 1894, Wm. C. Gross, *pro* defendant, moves for a new trial and in arrest of judgment in above case and assigns the following reasons:

1. The learned judge erred in permitting the district attorney to offer testimony in relation to the organization and management of the Mutual Saving and Distribution Fund Association of New York.

2. The learned judge erred in permitting the district attorney to frame questions by reading from copies of the New York Herald.

3. The learned judge erred in admitting evidence in relation to the principles upon which the Mutual Saving and Distribution Fund Association of New York was conducted.

4. The learned judge erred in permitting the district attorney to introduce any testimony whatever in relation to any matter or thing or in relation to any association or company which the defendant had organized or with which he had been associated other than the Provident Bond and Investment Co.

5. The learned judge erred in saying, "It would be legiti-
19 mate to show, if it is the fact, that the defendant and his business was attacked in the newspapers as an illegitimate business."

6. The learned judge erred in permitting the district attorney to offer testimony in relation to the expenses of the Provident Bond and Investment Co.

7. The learned judge erred in permitting the district attorney to ask the witness D. J. Sandham whether the Provident Bond and

Investment Company used the U. S. mail in connection with its business.

8. The learned judge erred in not permitting defendant's witness P. O. Blyler to answer the following question, to wit: "What is your opinion as to the possibility of the company carrying out its contracts?"

9. The learned judge erred in permitting testimony to be offered in relation to the Equitable Bond Company of Washington, D. C.

10. The learned judge erred in permitting the district attorney to ask the defendant questions in relation to his domestic affairs and the custody of his boy.

11. The learned judge erred in overruling the defendant's offer to show by the witness Isaac Johnson as follows: "I also offer to show that this witness, at the request of his client, made an investigation of the legality of the company and made his report to his client, and that on the strength of his report the client became an agent of the company and a bondholder."

12. The learned judge erred in not permitting the defendant to show by the witness D. H. Sleem that the scheme was practicable.

20 13. The learned judge erred in overruling the defendant's motion to quash the indictments.

14. The learned judge erred in permitting the Government to offer evidence under the indictments.

15. The learned judge erred in permitting the Government to offer evidence to the mailing of pamphlets of the Provident Bond and Investment Co. without the same being described in the indictments.

16. The verdict was against the evidence.

17. The verdict was against the law.

WM. C. GROSS, *Pro Def't.*

21 UNITED STATES
*vs.*
JOHN H. DURLAND.

*Surmotion in Arrest of Judgment.*

John H. Durland, by his counsel, William C. Gross, Harrity & Beck, and Hampton L. Carson, files the following additional reasons in support of his fourth reason already filed, namely, that the said bills of indictment are otherwise informal, bad, and defective:

Fifth. Because the said bills of indictment do not charge any offense under — 5480, R. S., or any other law of the United States.

Sixth. Because the said bills of indictment do not set forth any scheme or artifice to defraud within the meaning of the act of Congress.

Seventh. Because the said bills of indictment charge more than one separate and distinct offense in the first and second counts
22 in the bill of indictment No. 19 and the bill of indictment No. 20.

Eighth. Because each of said bills of indictment charge- more than three offenses, contrary to the act of Congress.

Ninth. Because it is not alleged that the various offenses charged within the said bills of indictment were committed within the same six calendar months.

WILLIAM C. GROSS,
HARRITY & BECK,
HAMPTON L. CARSON,
*Att'ys for Defen't.*

And thereupon, at the said November sessions of the said district court, held, as aforesaid, on the fifteenth day of January, in the year of our Lord one thousand eight hundred & ninety-five, before the said the Honorable William Butler, judge as aforesaid, comes the said John H. Durland, appearing as aforesaid, who is committed as aforesaid; and thereupon, arguments having been heard and due consideration having been given to the subject, the court is of opinion that the verdict aforesaid ought to stand, and that a new trial ought not to be granted, but that judgment ought to be en-
23 tered and given on said verdict for the reasons as set forth in the words and matter following, to wit:

UNITED STATES
*vs.*
JOHN H. DURLAND.
} Motion in Arrest of Judgment and for New Trial.

When called upon to plead, the defendant moved to quash the indictments for reasons specified and filed.

The motion was overruled.

After verdict he moved for a new trial and in arrest of judgment for reasons assigned, including those specified in the motion to quash.

These reasons and others not specified at the time are now urged with great earnestness in the defendant's behalf. I will not discuss the questions raised at any length. They have, so far as material, been considered in the cases about to be cited.

Of the reasons specified for quashing, the first is wholly immaterial and the second and third cannot be sustained. They are fully met by United States *vs.* Fleming, Pagin's Fed. Prac. & Forms, p. 255. That case was reviewed and affirmed, and I adopt its conclusions respecting the matter here involved.

Of the reasons for new trial and arrest of judgment I need
24 do little more than say that I cannot sustain them. In considering the 1st, 3rd, 4th, & 5th it must be borne in mind that the business in New York therein referred to was identically the same as that transacted here; that it was, as the defendant testified, transferred here when driven away from there, and also to remember in this connection and in considering the 9th specification that a vital question in the case was whether the defendant was himself deceived respecting the scheme—that is, whether he believed it to be legitimate and honest, though in fact it was not.

Under these circumstances it was deemed important to know what the defendant's knowledge and experience in this regard had been. For the same reason it was deemed proper to admit evidence that he had been attacked and the business denounced as dishonest, and his attention thus directed to its character. Of course his answer to the attack was also heard. In U. S. *vs.* Stickle, 15th Fed. Rep., 798, where the defendant was on trial (under the statute here involved) and his intentions and the nature of his business were subjects of inquiry, the prosecution was permitted to prove a previous indictment and plea of guilty for a like offense.

As respects the 2nd specification I need only say that it is inaccurate. The dist. attorney was not allowed to read from the attacks referred to, though doubtless some of his questions were based upon what he found in these attacks. The court forbade reading the attacks or any part of them.

The 7th, 8th, & 11th do not seem to require comment.

The 10th is directed against the latitude allowed in cross-examining the defendant. He came on the stand as a witness
25 and thus rendered himself liable to examination respecting his past conduct, so far as it might tend to shed light on his character and credibility. How far such examinations should go is matter for the discretion of the court. I do not think the discretion was abused in this instance. A striking illustration of the extent to which such examinations are sometimes carried is found in Tilton *vs.* Beecher (reported in a volume called "The Tilton-Beecher Trial"). The judge who sat was of distinguished character as a jurist and the counsel engaged were among the most eminent of their time. All the material events of the parties' lives were brought out on cross-examination, several days being devoted to this object alone.

The 12th assignment is (unintentionally) misleading. The witness was under cross-examination, and the question was deemed improper at the time. Whether he might have been examined on the subject if called by the defendant would have depended on his qualifications as an expert. The counsel were informed by the court (to avoid possible misunderstanding) that expert testimony respecting the scheme, its nature, feasibility, &c., was admissible and would be received if offered.

The 6th, 13th, 14th, 15th, & 17th specifications do not call for comment.

In addition to the reasons filed and above noticed, the defendant's counsel urge two others, on which they seem to place most reliance: 1st, that neither bill charges an offence under the statute; 2nd, if it does, more than three offences (the statutory limit) are embraced.

The 2nd is purely technical, and if correct in point of fact cannot be allowed after verdict. If true, the defendant has suf-
26 fered no injury from this cause. If embarrassed in preparing his defense he should have called attention to it at that time, when the Government could have cured the defect, if one existed, without losing its right to punish the defendant if found guilty, as

it must do if the reason is now allowed and judgment arrested. United States *vs.* Nye, 4 Fed. Rep., 888; Pickering *vs.* Miss., 47 Mo., 461; House *vs.* Lowell, 45 Mo., 381; Com. *vs.* Tuck, 20 Pickering (Mass.), 356; 13 Lea (Tenn.), 103; Bishop Crim. Pro., vol. 1, sec. 442; Revised Statutes, sec. 1025.

As respects the first of the additional reasons, it must be conceded, I think, that the defendant should not be sentenced if it is true. Indictment No. 19 charges in substance that the defendant at the time named wilfully devised a fraudulent scheme to obtain money from divers persons unknown to the grand jury, to wit, sums of $50 from each of said persons, and to cheat and defraud them thereof by representing that the Provident Bond and Investment Co. (of which he was president) would on the receipt of $10, and a further sum of $5 monthly for a time specified, from said persons issue to each of them a bond in the terms set forth; that it was not intended to pay the said persons the money mentioned in said bonds and so promised to be paid, but that the defendant intended fraudulently to apply the money so received to his own use and not towards the discharge of the said bonds as therein stated; that it was intended to employ the United States mails to carry out this scheme by placing letters therein and opening correspondence with such persons, and that the mails were so used and correspondence opened.

No. 20 in substance charges that the defendant devised a
27 fraudulent scheme to obtain money by false pretences, in the manner and by the means described, which consisted substantially in representing to divers persons unknown, and particularly to one W. S. Burke, that the Provident Bond & Investment Co. would pay, in the manner and at the times stated, large sums of money on the receipt of smaller ones, to wit, $100 on the receipt of $60, and $1,000 on the receipt of $500; that it was not intended to make such payments or that they should be made, but that the defendant fraudulently designed to convert the money so to be received from such persons to his own use and not to make payment to them as represented and promised; that the said defendant intended to use and did use the United States mails to carry said fraudulent scheme into effect by opening correspondence, &c.

Each of these indictments, in my judgment, charges an offence under the statute. The acts described seem plainly to be embraced by its terms. The indictments are possibly not drawn with as much care and skill as might have been employed. The only question here presented, however, is, Do they charge offences? In my judgment, they do. The argument to the contrary is, I think, fully met by United States *vs.* Fleming, before cited. Indeed, that case seems to meet every material question raised by this. What is there said respecting the refined criticism urged against the indictment under consideration applies with equal force here. Time was when such criticism was effective, but it has passed. Indeed, it was never effective in the Federal courts. They have always held that it is sufficient to charge an offence with such particularity as will protect the accused against danger of a second conviction and enable
28 him to prepare for trial. Here, as we have seen, an offence

is charged, and it cannot be pretended that the defendant is in danger of a second conviction. The Government has seen fit to include all use made of the mails in furtherance of the scheme in these bills. The language clearly precludes any further charge on that account. If such inclusion was erroneous or the bill was so wanting in particularity as to embarrass the defendant's preparation for trial, he should, as before stated, have taken advantage of these defects at an earlier stage of the case. While the defendant's construction of the statute is ingenious, it seems to me to be clearly erroneous. It ignores the obvious signification of the terms used. It is so fully and satisfactorily met by the opinion of the court in United States *vs.* Fleming that I could not profitably add anything to what is there said. The facts of that case were similar to those before me. The judge (Blodgett) who decided it below is greatly distinguished for learning and ability, and his decision, as before remarked, was affirmed on review. If it is in conflict with *In re* Henry, 123 U. S., 372, in one respect, as the defendant urges, it is not as relates to the matter here under consideration. See also U. S. *vs.* Watson, 35 Fed. Rep., 359; U. S. *vs.* Nortan, 29 Fed. Rep., 782; U. S. *vs.* Jones, 10 Fed. Rep., 469; U. S. *vs.* Sticker, 15 Fed. Rep., 798; U. S. *vs.* Haeflinger, 33 Fed. Rep., 469; U. S. *vs.* Haines, 29 Fed. Rep., 691; *In re* Jackson, 96 U. S., 727.

I am not able to see any materiality in the fact that the Provident Bond & Investment Co. had a charter, and that the defendant was its president. As he testifies, he "invented the scheme," obtained the charter, and formed the company. If the scheme was a fraud, as charged and found by the jury, how could the charter authorize the use of the mails for its promotion against the prohibition of the statute? As well
29 might it be urged that a charter authorizes the use of the mails to promote a lottery. Indeed, it was so urged in *In re* Jackson, above cited, but the charter was held to be unimportant. The charter here relied upon is not, however, a charter of this scheme. It is couched in vague, general terms and appears to have little, if any, relation to the business transacted by the company. Under similar charters issued by New Jersey, West Virginia, and some other States most of the dishonest financial schemes designed to cheat ignorant and credulous men and women are carried on. The charters are obtained for a double purpose—first, to secure or in the hope of securing personal immunity to the dishonest schemers, and, secondly, to secure a greater degree of confidence in their schemes. The circuit court of this district has very recently had occasion to pass upon the character of business transacted under one of these charters issued by West Virginia to the Mutual Bond & Investment Co. and found it to be a gross fraud upon the public. McLaughlin *et al. vs.* The Mutual Bond & Investment Co., No. 16, April sess., 1894. The charter there was as vague and general in its terms as the one before me and had about as little relation to the business transacted under it.

Whereupon a new trial is refused and the motion in arrest of judgment is dismissed.

30 And thereupon, on the day and year last mentioned aforesaid, all and singular the premises being seen and by the court here fully understood, it is considered and adjudged that the defendant, John H. Durland, pay to the United States a fine of fifty dollars; that he be imprisoned and confined in the Philadelphia county prison for the term of five calendar months, said term to be computed from the seventh day of December, A. D. 1894, the day upon which the defendant was convicted of the offence charged; that he pay the costs of prosecution and stand committed until judgment be fully complied with, and that he be subject in all respects to the same discipline and treatment as convicts sentenced by the courts of the Commonwealth of Pennsylvania.

And afterwards a petition that a writ of error may be allowed and citation may issue, directed to the district court of the United States for the eastern district of Pennsylvania, from the Su-
31 preme Court of the United States, with assignment of errors, bond for the prosecution of said writ, and order allowing said writ of error and citation and granting stay of execution, &c., having been filed, are in the words and figures following, to wit:

In the Supreme Court of the United States.

To the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States:

The petition of John H. Durland respectfully represents—

That he was indicted in the United States district court for the eastern district of Pennsylvania upon a bill of indictment entitled as of November sessions, 1894, No. 19.

That on the 28th day of November, A. D. 1894, he filed a motion to quash the indictment, assigning as reasons the following grounds:

1. Because the said John H. Durland was bound over simply to answer the charge of depositing a letter and circular in the post office of the United States in relation to an enterprise similar to a lottery, whereas the said bill of indictment consists solely of
32 charges which are separate and distinct from the said offence for which he, the said John H. Durland, was bound over.

2. Because the said bill of indictment fails to set out specifically and particularly the contents and descriptions of the said alleged twenty letters and packets alleged to have been deposited in the post office at Philadelphia, as alleged in the first and second counts of said indictment.

3. Because the said bill of indictment fails to state the names and addresses to whom the alleged twenty letters and packets were alleged to have been addressed.

4. Because the said bill of indictment is otherwise informal, bad, and defective; all of which matters and things said defendant is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the

defendant further moves the court for his discharge by the court from the said premises.

And this motion being overruled, he was duly arraigned upon each bill and pleaded "Not guilty," and on the seventh day of December, A. D. 1894, he was, after a trial by jury, convicted upon both of the counts contained in said bill of indictment.

A motion in arrest of judgment and for a new trial, with an assignment of special reasons, was filed, and, being overruled, he was on the 15th day of January, A. D. 1895, sentenced under said bill to a term of imprisonment in the county prison of the city and county of Philadelphia for a space of five months, and a fine of $50.

33 He respectfully represents that in overruling the motion to quash the indictments and the motion in arrest of judgment error was committed by the trial court, and that he has been prejudiced and greatly damaged thereby, and that it is his desire to prosecute a writ of error, to be addressed to the said district court for the eastern district of Pennsylvania, in accordance with section 5 of the act of Congress entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891.

He further represents that he has filed of record with *with* the clerk of the court below a separate assignment of error prior to the presentation of this petition, in accordance with the rules of the Supreme Court of the United States.

Wherefore he prays that a writ of error may be allowed in the premises, directed to the district court of the United States for the eastern district of Pennsylvania, and that a citation may be issued, returnable within thirty days, upon the entry of security in whatever sum may be directed; that a supersedeas may be granted and stay of execution of proceedings in the court below pending such writ of error or appeal, and that your petitioner be admitted to bail upon giving bond in such sum as the district judge for the eastern district of Pennsylvania may direct.

And he will ever pray, &c.

JOHN H. DURLAND,
By HAMPTON L. CARSON,
HARRITY & BECK,
*Counsel.*

34 District Court of the United States for the Eastern District of Pennsylvania, November Sessions, 1894.

UNITED STATES OF AMERICA
*vs.*
JOHN H. DURLAND. } No. 19.

*Assignment of Errors.*

1. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground of the court's

refusal to grant the motion to quash the indictment, said motion to quash being based upon the following grounds:

Because the said John H. Durland was bound over simply to answer the charge of depositing a letter and circular in the post office of the United States in relation to an enterprise similar to a lottery, whereas the said bill of indictment consists solely of charges which are separate and distinct from the said offence for which he, the said John H. Durland, was bound over.

2. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground of the court's refusal to grant the motion to quash the indictment, said motion to quash being based upon the following grounds:

35 Because the said bill of indictment fails to set out specifically and particularly the contents and descriptions of the said alleged twenty letters and packets alleged to have been deposited in the post office at Philadelphia, as alleged in the first and second counts of said indictment.

3. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground of the court's refusal to grant the motion to quash the indictment, said motion to quash being based upon the following grounds:

Because the said bill of indictment fails to state the names and addresses to whom the alleged twenty letters and packets were alleged to have been addressed.

4. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground that the court erred in refusing to quash the indictment, said motion being based upon the ground that the bill of indictment was otherwise informal, bad, and defective.

5. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground that the said bill of indictment did not charge any offence under section 5480 of the Revised Statutes or any other law of the United States.

6. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground that the said bill of indictment did not set forth any scheme or artifice to defraud within the meaning of the act of Congress.

36 7. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground that the bill of indictment charged more than one separate and distinct offence in the first and second counts in the bill of indictment.

8. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground that the bill of indictment charged more than three offences, contrary to the act of Congress.

9. The court erred in refusing to arrest the judgment, said motion in arrest of judgment being based upon the ground that it is not alleged that the various offences charged in the said bill of indictment were committed within the same — calendar months.

10. The court erred in imposing sentence of five months, for the reason that there is nothing to show upon the face of the said bill of indictment that the letters deposited and lodged in the mails were not the same letters in indictment No. 19, and the defendant has therefore been twice sentenced for the same offence.

HARRITY & BECK.
HAMPTON L. CARSON.

37 Know all men by these presents that we, John H. Durland, as principal, and The City Trust, Safe Deposit and Surety Company of Philadelphia, as sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the said United States of America, their certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a session of the criminal court held at Philadelphia, in the eastern district of Pennsylvania, in the month of December, A. D. 1894, in a suit depending in said court between The United States of America, plaintiff, and John H. Durland, yeoman, defendant, in said district, upon a certain bill of indictment No. 19, of November sessions, 1894, upon which, after sundry other proceedings, issue was joined and a trial had before the Hon. William Butler, a United States district judge, and by the jury in said case a verdict was rendered against the said John H. Durland on December 7, 1894, of guilty, and he was sentenced to a term of five months' imprisonment in the county prison of Philadelphia, and to pay a fine of fifty dollars, and the said John H. Durland, considering that manifest errors have happened, to his great prejudice, having presented his petition for a writ of error to the Hon. George Shiras, Jr., of the United States Supreme Court, and having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the verdict in the aforesaid suit, and a citation directed to the said clerk of the United States district court for the eastern district of Pennsylvania, citing and admonishing him to return the record, so that it be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said John H. Durland shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then

the above obligation to be void; else to remain in full force and virtue.

JOHN H. DURLAND. [SEAL.]
THE CITY TRUST, SAFE DEPOSIT AND SURETY CO. OF PHILA.,
By CHARLES M. SWAIN, *President.*
JAS. F. LYND, *Sec'ty.* [SEAL.]

Sealed and delivered in presence of—
THOMAS M. CARLIN.

WM. G. WISE,
J. WESLEY CONA,
As to surety.

Approved by—
GEORGE SHIRAS, JR.,
*Associate Justice Sup. Court U. S.*

Jan'y 24th, 1895.

EASTERN DISTRICT OF PENNSYLVANIA:

I hereby certify that "The City Trust, Safe Deposit and Surety Company of Philadelphia," the surety within named, is good and sufficient for the full amount of the penalty on the bond.

CHARLES S. LINCOLN,
*Clerk of the District Court of the United States for the Eastern District of Pennsylvania.*

38 *Order.*

And now, to wit, the 24th day of January, A. D. 1895, the petition of John H. Durland, praying for a writ of error to the district court of the United States for the eastern district of Pennsylvania, having been read and considered and the rules of this court having been complied with as to the filing with the court below assignments of error, it is ordered that a writ of error be allowed, and that a citation do issue, addressed as prayed for, returnable within thirty days hereafter, upon the entry of security in the sum of $250.00; that a supersedeas be granted and a stay of proceedings and execution of sentence imposed by the court below pending this writ of error, and that John H. Durland, petitioner, be admitted to bail upon giving bond in such sum as the district judge for the eastern district of Pennsylvania shall direct.

GEORGE SHIRAS, JR.,
*Associate Justice Supreme Court U. S.*

39 And thereupon an order for the release of the said defendant, John H. Durland, pending the final determination of the proceedings on said writ of error, is entered in the words and figures following, to wit:

E. D. of Pa., Nov. S., 1894.

THE UNITED STATES } No. 19.
*vs.*
JOHN H. DURLAND. }

And now, to wit, Jan. 25, A. D. 1895, a writ of error having been allowed in the above case from the judgment of the district court, and it having been ordered that the defendant be released on bail pending the final determination of the proceedings on said writ of error, and a bond and surety in two thousand dollars ($2,000) having been approved by this court, it is ordered that upon the execution of the said bond by the said John H. Durland, defendant, he be forthwith released from imprisonment and discharged from the custody of the superintendent of the Philadelphia county prison.

And afterwards, on the same day, it appearing that the defendant had executed the said bond, he is discharged from the custody of the superintendent of the Philadelphia county prison.

40 UNITED STATES, } *ss:*
*Eastern District of Pennsylvania,* }

We, John H. Durland, residing lately at Moore's Station, Delaware county, in the State of Pennsylvania, and now residing at No. 42 West 97th street, New York city, in the State of New York, and Robert Anderson, residing at No. 418 North 40th street, in the city of Philadelphia and State of Pennsylvania, acknowledge ourselves to be jointly and severally indebted unto the United States of America in the sum of two thousand dollars, lawful money of the United States of America, to be levied of our goods and chattels, lands and tenements, upon this condition: that if the said John H. Durland, the defendant, upon whose application a writ of error has been allowed by the Supreme Court of the United States and is now pending, shall be and appear at the district court of the United States for the eastern district of Pennsylvania, upon the determination of the proceedings on said writ of error or within five days thereafter, to answer and obey whatever final order or judgment shall be made in the premises, then this recognizance to be void; otherwise to remain in full force and virtue.

JOHN H. DURLAND. [L. S.]
ROBERT ANDERSON. [L. S.]

Taken, acknowledged, and subscribed this twenty-fifth day of January, A. D. 1895, in open court.

CHARLES S. LINCOLN,
*Clerk District Court.*

41 UNITED STATES OF AMERICA, } *sct:*
*Eastern District of Pennsylvania,* }

I, Charles S. Lincoln, clerk of the district court of the United States for the eastern district of Pennsylvania, do hereby certify

that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said court in a certain criminal cause therein lately depending, to wit, indictment, No. 19, November sessions, 1894, The United States of America against John H. Durland, defendant, as full and entire as the same are now remaining among the records of the said court in my office, with copy of petition for writ of error, of the assignment of errors, and of the bond on writ of error.

Seal of the District Court of the United States, E. D. Penna.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court, at Philadelphia, this seventh day of February, in the year of our Lord one thousand eight hundred and ninety-five, and in the one hundred and nineteenth year of the Independence of the United States.

CHARLES S. LINCOLN,
*Clerk Dist. Court U. States.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between The United States, plaintiff, and John H. Durland, defendant, No. 19, November sessions, 1894, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 24th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

Allowed by—
GEORGE SHIRAS, JR.,
*Associate Justice of the Supreme Court of the United States.*

[Endorsed:] No. 19, Nov'r sess., 1894, of indictments. District court U. States, eastern district of Penna. The United States *vs.* John H. Durland. Writ of error from the Supreme Court of the United States. Lodged in the clerk's office of the district court of the United States this Jan'y 25th, 1895.

43 UNITED STATES OF AMERICA, *ss:*

To The United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Pennsylvania, wherein John H. Durland is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 24th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

GEORGE SHIRAS, JR.,
*Associate Justice of the Supreme Court of the United States.*

[Endorsed:] No. 19, Nov'r sess., 1894, of indictments. District court U. States, eastern district of Penna. The United States *vs.* John H. Durland. Citation on writ of error and acceptance of service by the attorney of the United States. Lodged in the clerk's office of the district court of the United States this January 25th, 1895. Service accepted Jan'y 25, 1895. Ellery P. Ingham, U. S. att'y.

Endorsed on cover: Case No. 15,795. E. Pennsylvania D. C. U. S. Term No., 911. John H. Durland, plaintiff in error, *vs.* The United States. Filed February 15, 1895.